UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

FILED

NOV 13 2015

JULIE RICHARDS JOHNSTON, CLERK
US DISTRICT COURT, EDNC
BY BLH DEP CLK

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

an Iphone receiving calls via number (919) 222-5916, located at the Office of the FBI in Greenville, NC

Case No. 5:15-MJ-2197-JG

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A.

located in the Eastern District of North Carolina, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B and the Affidavit of T.S. Lea, incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
18 U.S.C. 201(b)(1); 18 U.S.C. 201(c)(1)(A); 18 U.S.C. 1512(c)	Promise/Payment of Bribe; Promise/Payment of Gratuity; Corrupt Attempt to Influence an Official Proceeding

The application is based on these facts:

See the Affidavit of T.S. Lea, incorporated herein by reference.

☑ Continued on the attached sheet.

☐ Delayed notice of _____ days (give exact ending date if more than 30 days: __________) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[signature]
Applicant's signature

T.S. Lea, Special Agent, FBI
Printed name and title

On this day, T. S. LEA appeared before me via reliable electronic means, was placed under oath, and attested to the contents of this Application for Search Warrant.

[signature]
Judge's signature

Date: 13 November 2015

City and state: Raleigh, North Carolina

James E. Gates, U.S. Magistrate Judge
Printed name and title

IN THE MATTER OF AN APPLICATION TO SEARCH AN IPHONE RECEIVING CALLS VIA NUMBER (919) 222-5916, LOCATED AT THE OFFICE OF THE FEDERAL BUREAU OF INVESTIGATION IN GREENVILLE, NORTH CAROLINA	)))))))	**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT APPLICATION**

I, T.S. Lea, being duly sworn, depose and say as follows:

A. IDENTITY AND EXPERIENCE OF AFFIANT

(1) AFFIANT, T.S. Lea, is a Special Agent with the Federal Bureau of Investigation assigned to the Charlotte, North Carolina (NC) Field Office with duty in the Greenville Resident Agency. I have been employed as a Special Agent with the FBI since 1998 and have worked a wide variety of federal criminal investigations including, but not limited to public corruption matters.

(2) I am familiar with the facts and circumstances set forth in this affidavit. The information herein has been obtained from various sources. These sources include my personal observations, review of reports and summaries, and discussions with other law enforcement officers who have personal knowledge of the events described herein.

(3) This affidavit contains only those facts which are sufficient and necessary to promote the purpose of the affidavit, described below. This affidavit should not be construed to contain all facts known to your affiant and the investigating agencies regarding the matter under investigation.

B. PURPOSE OF THE AFFIDAVIT

(4) This affidavit is made in support of an application to search an Iphone receiving calls via number (919) 222-5916, located at the office of the Federal Bureau of Investigation in Greenville, North Carolina, as more fully described in ATTACHMENT A, and hereinafter referred to as the "Subject Device." The purpose of the search is to locate and seize the items set forth in ATTACHMENT B, hereinafter referred to as the "Target Evidence." The target evidence, if found within the Subject Device, shall constitute instrumentalities of certain federal offenses detailed below, which are referred to hereinafter as the "Subject Offenses." The Subject Offenses are identified as follows:

(5) Promise or Payment of a Bribe, in violation of Title 18, United States Code, Section 201(b)(1);

(6) Promise or Payment of a Gratuity, in violation of Title 18, United States Code, Section 201(c)(1)(A);

(7) Corrupt Attempt to Influence an Official Proceeding, in violation of Title 18, United States Code, Section 1512(c)(2).

C. STATEMENT OF PROBABLE CAUSE THAT THE SUBJECT OFFENSES HAVE BEEN / ARE BEING COMMITTED

(8) Probable cause exists to believe that the subject offenses have been committed.

(9) A Federal Bureau of Investigation (FBI) Task Force Officer (TFO) whose identity is known to your affiant (hereinafter the "FBI Officer") was duly sworn as a Special Deputy United States Marshal before Eastern District of North Carolina (EDNC) US Marshal Scott J. Parker on May 27, 2015. The special deputation authorizes the FBI Officer to support FBI investigations into allegations of violations of Title 18 of the United States Criminal Code. The FBI Officer's authorization expires on May 31, 2017. The FBI Officer has served as an FBI TFO with the same Title 18 authorization and special deputation authority since approximately 2009. The FBI Officer has been a sworn North Carolina Law Enforcement officer and employed as such with the Wayne County (Goldsboro) Sheriff's Office since the late 1990's.

(10) During times material to this Affidavit, ARNOLD OGDEN JONES, II (hereinafter "JONES") was an elected North Carolina Superior Court Judge with chambers in North Carolina's Judicial District 8-B, which covered Wayne, Lenoir, and Greene counties.

(11) In our about the week of September 13, 2015, JONES contacted one out of three federal TFOs employed at the Wayne County Sheriff's Office. The first of these TFOs was an officer with the United States Drug Enforcement Administration (DEA), and shall be referred to herein as the "DEA Officer." JONES made contact with the DEA Officer via phone. During a phone conversation, JONES asked the DEA Officer questions about how to obtain cell phone text messages from the phone carrier. The DEA Officer informed JONES that if JONES owned the phone account that was associated with the text messages he desired, that JONES could access the phone carrier's web site to obtain the text messages. The DEA Officer further advised JONES that if JONES did not own the account associated with the text messages, that JONES would need a search warrant to obtain the desired text messages.

(12) On or about October 10, 2015, JONES sent a text message to the second of three federal TFOs employed at the Wayne County Sheriff's Office. The second of these TFOs is referred to herein as the "FBI Officer."[1] JONES's text message

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(1) [1] Prior to this time JONES had been made aware of the FBI Officer's status as an FBI TFO. On or about March 25, 2015, the TFO obtained a Nontestimonial

was transmitted from a phone receiving and transmitting calls from number (919) 222-5961, which is assigned to carrier Cellco Partnership, Inc., doing business as Verizon Wireless. In the text message, JONES requested that the FBI Officer "get access to text[] messages exchanged between 2 numbers and get copies of those messages." JONES specified the phone numbers associated with the text messages he desired. JONES offered to pay the FBI Officer for copies of the text messages.

(13) Your Affiant is aware from experience as a member of law enforcement that, except in limited circumstances, telephone carriers do not disclose text messages to members of law enforcement unless the law enforcement officer produces to the carrier a search warrant that has been signed by a neutral and detached judicial officer. Law enforcement officers are unable to obtain a search warrant for the content of text messages except upon a magistrate judge's finding that there was probable cause to believe that the records associated with the phone number (including text messages) contained evidence of a crime. Search warrants for text messages are issued upon a sworn affidavit from a law enforcement officer that demonstrates why there is probable cause to believe that the phone records contain evidence of a crime.

(14) The FBI Officer did not have any evidence to support that either of the phone numbers provided by JONES were involved in any criminal activity. Instead, text messages from JONES indicated that the text messages were "just for [him]," and that they "involve[d] family."

(15) The FBI Officer was prohibited by the United States Constitution and federal law, as well as FBI policy and United States Department of Justice policy, from obtaining a search warrant without first conducting an investigation to confirm that the search warrant to acquire the text messages was supported by probable cause.

(16) The FBI Officer was also prohibited by the United States Department of Justice, FBI policy, and the Privacy Act of 1974, from disclosing to JONES the text messages requested by JONES, either as a favor to JONES, or in exchange for payment from JONES.

Identification Order (NIO) authorized by JONES to obtain fingerprints and collect bucal DNA samples from a Wayne County resident matching the description of an FBI Top Ten Fugitive. The FBI Officer submitted an application and an eleven page statement of reasonable suspicion to JONES supporting the issuance of the NIO. Within the application to the court the FBI Officer stated: "I, [FBI Officer], task force officer for the Federal Bureau of Investigation,…" The FBI Officer swore to the contents of the application and listed within the applications signature block his/her Title/Position as FBI TFO/Detective.

(17) On or about October 19, 2015, the FBI Officer informed JONES that the FBI Officer lacked probable cause to get the text messages requested by JONES, but would continue to try to get the messages if JONES desired. JONES responded to the FBI Officer, "I want down low – see what you can do without drawing attention." JONES further informed the FBI Officer that "This involves family so I don't want anyone to know."

(18) It should be noted that if the FBI Officer had used his Wayne County jurisdiction to obtain a search warrant for text messages from a Wayne County judge, this would have likely drawn attention to JONES, who was a sitting judge in Wayne County. Due to JONES's multiple requests for secrecy, and JONES's decision to make the request of an FBI TFO, your affiant suspected that it was JONES's desire for the FBI Officer to obtain the text messages by proceeding before a federal magistrate judge located outside of the jurisdiction of Wayne County and other counties served by JONES in his capacity as a North Carolina Superior Court Judge.

(19) On or about October 21, 2015, JONES texted the FBI Officer, "The texts are continuing. I hope you can get them with no one finding out. If you can't, at least you tried." Pursuant to an operation conducted by your affiant, the FBI Officer indicated his willingness to try to get the messages for JONES, but stated to JONES, "I need to make sure we have a short conversation before I finalize things for my comfort. Not on phone." JONES responded, "Great – I want no problems for either."

(20) On or about October 26, 2015, a Monday, pursuant to the operation, the FBI Officer transmitted a message to JONES indicating that the FBI Officer was planning a trip to Greenville on Wednesday. It should be noted that a federal magistrate judge sits in Greenville, which is outside of the jurisdiction of the FBI Officer's Wayne County jurisdiction. JONES and the FBI Officer coordinated an in-person meeting to take place the following evening.

(21) On or about October 27, 2015, a controlled encounter took place between the FBI Officer and JONES in a vehicle. The encounter was captured on devices capable of recording video and audio signals. It should be noted that prior to this time, JONES had already been advised by the DEA Officer that a search warrant would be required for JONES to obtain the text messages he desired. The FBI Officer had also informed JONES that he lacked probable cause to obtain the desired text messages. During the meeting, the FBI Officer told JONES that that he was going to Greenville the following day to see the federal magistrate, but before going through "that process," he wanted to confirm with JONES the phone numbers for which JONES desired to receive text messages. JONES confirmed the phone numbers previously transmitted by JONES to the FBI Officer via text message. JONES voiced no opposition to the FBI Officer's stated intentions to proceed before a federal magistrate to obtain the desired text messages.

(22) During the meeting on October 27, 2015, JONES made multiple assurances to the FBI Officer that the FBI Officer's involvement in obtaining the text messages would "never come out," and that the FBI Officer could "trust [JONES] one million percent." JONES stated, "This will never come back that anybody knows I've even got this stuff;" and "Nobody's going to ever know where this came from;" and "I will be so cool about it . . . I will handle it in such a way ... this will never come out. I promise."

(23) During the meeting on October 27, 2015, the FBI Officer and JONES also discussed the FBI Officer's fee for accessing and delivering the text messages to JONES. It should be noted that prior to this time, JONES had only stated that he would *pay* for copies of the text messages, and had not stated the *amount* that he would pay. After the FBI Officer raised the issue of payment, JONES asked the FBI Officer what he thought was a fair number, stating, "You tell me, I'm serious." JONES confirmed that he did not want the FBI Officer to only obtain and deliver the text messages as a favor by stating, "No, no, no, You've had to take time, and I'm glad to do something. Do you follow me?" JONES and the FBI Officer initially agreed upon "a couple of cases of beer" as the amount of the payment from JONES to the FBI Officer.

(24) Following the October 27, 2015 meeting, your affiant carried out an operation to determine whether JONES would follow through on his promise to provide cases of beer to the FBI Officer in return for accessing and delivering the text messages that JONES requested. On or about October 28, 2015, your affiant caused the FBI Officer to transmit a text message to JONES indicating that proceedings before the federal magistrate judge to obtain the text messages were complete. In furtherance of the operation, the FBI Officer also informed JONES that he would get back in touch with JONES after receiving the text messages from the phone carriers.

(25) On or about November 2, 2015, in furtherance of the operation, the FBI Officer informed JONES that the FBI Officer had received the text messages requested by JONES. JONES agreed to shred the FBI disk containing the text messages as soon as possible because the disk was acquired from the FBI Officer's FBI computer.

(26) On or about November 3, 2015, JONES informed the FBI Officer that he had his "paycheck" in the back seat of his vehicle. JONES and the FBI Officer then coordinated a meeting in which the FBI Officer would deliver the FBI disk containing text messages requested by JONES, and the FBI Officer would deliver the FBI Officer's "paycheck." During these discussions on the same date, JONES agreed, in lieu of cases of beer, to pay the FBI Officer $100 in cash for providing JONES the text messages.

(27) On November 3, 2015, JONES and the FBI Officer met in person in Goldsboro, North Carolina. JONES delivered to the FBI Officer $100 in cash. In return, the

FBI Officer delivered to JONES an FBI disk that was represented to contain the text messages requested by JONES.

(28) Following the exchange of the cash and disk on November 3, 2015, JONES transmitted a text message to the FBI Officer indicating that he had attempted to access the contents of the disk. As the disk was provided pursuant to the operation conducted by your Affiant, no unlawfully-obtained text messages were actually received or accessed by JONES.

(29) On the evening of November 3, 2015, a federal grand jury sitting in the Eastern District of North Carolina issued a true bill of indictment charging JONES with each of the Subject Offenses.

(30) On the morning of November 4, 2015, JONES was arrested pursuant to a warrant. At the time of his arrest, JONES was in possession of the Subject Device. The Subject Device rang in response to a call dialed to (919) 222-5916. Additionally, phone number (919) 222-5916 is the same number that the FBI Officer utilized when communicating with JONES via voice and text messages, the content of which is detailed in the preceding paragraphs of this Affidavit.

(31) The Subject Device is presently stored in evidence at the FBI Office in Greenville, North Carolina.

D. STATEMENT OF PROBABLE CAUSE THAT THE TARGET EVIDENCE WILL BE FOUND AT THE SUBJECT PREMISES

(32) Probable cause exists to believe that evidence of the Subject Offenses will be found within the Subject Device.

(33) The Subject Device is a silver Iphone, which is commonly referred to as a "smartphone." Your Affiant is aware from experience as a Special Agent with the FBI that smartphones, such as the Subject Device, are capable of receiving and storing massive amounts of data concerning a variety of phone applications. These applications include, but are not limited to, the receipt and transmission of text messages, the receipt and transmission of phone calls, interface with geolocation services, including GPS and cell towers, interface with internet service providers and search engines, the receipt and transfer of email messages, the creation and retention of audio, photo, and video files, records of contacts and contact information associated with the user, including phone numbers, addresses, and email addresses, and interface with various social media providers, including but not limited to Facebook, Instagram, and Linkedin. Records concerning a user's utilization of these application features are frequently stored on the smartphone's internal memory until they are deleted by the user. Even after deletion by the user, remnants of such application usage may remain on the phone's internal memory for an indefinite period.

(34) Based upon the information contained in the preceding section, the Subject Device was utilized by JONES to receive and transmit messages, and to conduct phone calls, related to the Subject Offenses, for which JONES has been indicted by a federal grand jury. Both the content of these text messages, and the timing of said messages, constitute evidence of the Subject Offenses. Records of phone calls received and transmitted by JONES, including the timing and duration of said calls, constitute evidence of the Subject Offenses in that said phone calls and text messages were transmitted during the course of the commission of the Subject Offenses. Records of interface with internet service providers and search engines may constitute evidence of the offense in that they tend to show the state of mind of the user during the time when the Subject Offenses were committed. For example, internet searches may include records concerning the wrongfulness of the defendant's actions, or may include attempts by the defendant to research other facts related to the Subject Offenses. Records concerning the whereabouts of the Subject Device constitute evidence of the offense in that they tend to establish the identity of the user and corroborate the user's location at the places and times described in this Affidavit. Lastly, records of contacts and contact information associated with the user, including phone numbers, addresses, and email addresses, constitute evidence of the offense in that they corroborate identity of the user of the phone and tend to show the phone user's knowledge of the name and identity of those contacts with whom the user has communicated via voice call and text message communication.

(35) The Subject Device was seized within 24 hours of the completion of the offense on November 3, 2015. As noted above, your Affiant is aware from experience examining smartphones that such devices contain various records of user activity on the phone, and that such records may be stored on the device for an indefinite period of time, even after an attempt by the user to delete said records. Your Affiant has no information or basis to believe that the Target Evidence will not be found on the Subject Device.

(36) Therefore, given the close proximity in time between the completion of the Subject Offenses and the seizure of the Subject Device, and other information described in this Affidavit, there is probable cause to believe that the Subject Device will contain evidence of the Subject Offenses.

E. CONCLUSION

Based upon the information contained in this affidavit, there is probable cause to believe that the Target Evidence pertaining to the Subject Offenses will be found within the Subject Device. Your Affiant respectfully requests that a search warrant be issued authorizing me, and such additional law enforcement personnel are necessary, to execute the proposed search warrant that is attached to this application.

As the proposed search does not entail the entry into a residence, and involves the search of a device at a secure location, your Affiant requests permission to execute the proposed warrant at any time in the day or night.

T.S. LEA, SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

On this 13 day of November 2015, T. S. Lea appeared before me via reliable electronic means, was placed under oath, and attested to the contents of this Affidavit.

JAMES E. GATES
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

The place to be searched, referred to herein as the "Subject Device," is a silver Iphone receiving calls via number (919) 222-5916, that is presently located at the office of the Federal Bureau of Investigation in Greenville, North Carolina.

ATTACHMENT B

ITEMS TO BE SEIZED / TARGET EVIDENCE

This warrant authorizes (i) the search of the property identified in Attachment A for only the following and (ii) authorizes the seizure of the items listed below only to the extent they constitute the following:

(a) evidence of the Subject Offense(s) as defined herein; or

(b) any item constituting contraband due to the Subject Offense(s), fruits of the Subject Offense(s), or other items possessed whose possession is illegal due to the Subject Offense(s); or

(c) any property designed for use, intended for use, or used in committing the Subject Offense(s).

The Subject Offenses, as that term is used herein, are defined as follows:

(1) Promise or Payment of a Bribe, in violation of Title 18, United States Code, Section 201(b)(1)

(2) Promise or Payment of a Gratuity, in violation of Title 18, United States Code, Section 201(c)(1)(A)

(3) Corrupt Attempt to Influence an Official Proceeding, in violation of Title 18, United States Code, Section 1512(c)(2)

Subject to the foregoing, the items authorized to be seized include the following electronic records, to the extent they were created, accessed, stored, maintained, or transmitted on the Subject Device between September 13, 2015, and November 4, 2015:

- Records concerning the receipt and transmission of text messages,
- Records concerning the receipt and transmission of phone calls,
- Records concerning interface with geolocation services, including GPS and cell towers,
- Records concerning interface with internet service providers and search engines,
- Records of contacts and contact information associated with the user, including phone numbers, addresses, and email addresses.